

Discussion Class Prep: CPR3701

On Monday, 09h00 in the suburb of Boiketlong, Thabo is accosted inside the yard of Mrs Sekgobela whilst allegedly trying to steal a bicycle. The 'Captain' of the local Neighbourhood Watch, Piet Pompies is called to the scene. He immediately handcuffs Thabo and puts him into his van. Piet decides that Thabo needs to be 'taught a lesson in good behavior'. He thereupon drives him to his (Piet Pompies') home where he gives him chores to clean his yard and garage, which had been left untended for quite some time. Thabo is quite afraid of Piet Pompies, who is a known locally as a no-nonsense former policeman, who does not hesitate to mete out hidings when he deems it necessary. Piet keeps Thabo 'in custody' in his garage from Monday morning until Thursday evening, occasionally releasing him in the morning to perform chores as instructed. On Friday morning (09h00) he takes Thabo to the local police station, where he lays a charge of attempted theft against him. Thabo is taken into custody by Sgt. Kunutu, who takes him to court at 11h00, for his first appearance. Thabo is not legally represented at this stage. He is not particularly sure of his rights, and whether he can apply for bail. Piet Pompies neglects, upon inquiry, to inform Thabo of his right to legal representation, merely intimating that 'a lawyer is not necessary', and that Thabo cannot, at any rate 'afford a lawyer'.

- (1) Which part of the law regulates the essential elements of the offence allegedly committed by Thabo? (1)
- (2) Which part or component of the law regulates the procedure to be followed in executing the prosecution? (1)
- (3) Which part of the law determines the charges to be put against Thabo, and the so-called definitional elements which must be established to successfully prove said charges? (1)
- (4) If the case goes on trial which burden must be discharged, and by whom? (2)
- (5) Briefly discuss whether the type of offence mentioned herein can or should affect the so-called presumption of innocence in any way. (2)
- (6) Due to the nature of the alleged offence, which court in the South African hierarchy has jurisdiction over the accused? (1)
- (7) Which sentence options are available to the court referred to in (6)? (7)

- (8) Briefly discuss whether Thabo had the right to legal representation at time of his arrest, and whether this right was, indeed, observed by Sergeant Pompies. (8)
- (9) Looking at the circumstances of the scenario, briefly explain:
- i. the procedure and the limitations which must be observed immediately after the arrest of an accused person in terms of s 50 of the CPA. (3)
 - ii. whether the incarceration or detention of Thabo at Piet's house can, strictly speaking, be regarded as lawful detention. (5)
 - iii. the appropriate court day, in terms of legislative and Constitutional limitation, on which Thabo was finally supposed to be brought before court. (6)
 - iv. the consequences of arrest, and the failure to produce the accused before court beyond the time limit regulated by the CPA and the Constitution. (2)
- (10) Discuss the powers provided under the CPA of Piet Pompies as the member of a Neighbourhood Watch to effect arrest without a warrant. (7)